

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

Deborah Winningham,)	
)	
Plaintiff,)	
)	
vs.)	No. 06-0568-CV-W-FJG
)	
Swift Transportation Co., Inc., et al.,)	
)	
Defendants.)	

ORDER

In the Court's ruling on defendants' motion in limine (Doc. No. 67), the Court ordered plaintiff on August 2, 2007 (Doc. No. 81) to produce the evaluations from defendant Abdelmokarm's Swift instructors in order to determine the relevancy of this evidence. The Court had also stated in its Order that it was unable to determine the relevancy of the audio tape of the cell phone conversation of Michael Munroe without the benefit of listening to its contents. Plaintiff submitted both the audio tape and the evaluations of defendant Abdelmokarm on August 7, 2007. The Court has since reviewed the audio tape and the evaluations and has made the following findings:

1. The Court finds that the evaluations of defendant Abdelmokarm are relevant to the issues in this case. The evaluation reports span from August 24, 2005 to September 13, 2005. The accident in this case occurred on September 16, 2005. The evaluation reports contain comments relating to defendant Abdelmokarm's performance and driving skills prior to the accident. The Court finds these evaluations are relevant to whether defendant Swift was negligent in entrusting its

tractor trailer to defendant Abdelmokarm. Thus, defendants' motion in limine (Doc. No. 67) to exclude evaluations from defendant Abdelmokarm's Swift instructors is **DENIED**.

2. The Court finds that the audio tape of Michael Munroe's cell phone conversation is irrelevant to the issues in this case. The only events that can be heard on this tape is Michael Munroe leaving a voicemail message for his co-worker, Munroe's screams, and an unidentified individual's cries for help. The tape only documents that the accident occurred, which is not disputed in this case. The tape is not relevant to whether any of the defendants were negligent. Therefore, defendant's motion in limine (Doc. No. 67) to exclude the audio tape is **GRANTED**.

IT IS SO ORDERED.

Date: 8/21/07
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge